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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,733	01/26/2004	Mignano Daniel	MIGNANO - I	8638
25889	7590	08/24/2005	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/764,733

Applicant(s)

DANIEL, MIGNANO

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9, 11-15, 17, 18, 21, 23-26, 29, 30, 34-40, and 46 is/are rejected.
- 7) ☒ Claim(s) 7, 10, 16, 19, 20, 22, 27, 28, 30-33 and 38-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 and 11 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/26/04</u>                                                               | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 1/26/04 is noted. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, Examiner is considering the information disclosure statement.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, (1) the third means for detachably fastening the first means and (2) the fifth means for detachably securing the hunting blind to the pack must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

4. The disclosure is objected to because of the following informalities:

Sections/headings are underlined and/or in bold. Please note, "Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading."

Appropriate correction is required.

***35 USC § 112, paragraph 6***

5. Claims 8, 10, 13, 17-20, 25-28, 44, and 45 are written in "means plus function" form and since they meet the analysis set forth in MPEP 2181, Examiner assumes that applicant wishes to invoke 35 USC § 112, paragraph 6.

***Claim Objections***

6. Claim 7 is objected to because of the following informalities: It appears as though applicant meant for line 6 to read, "wherein said pack *has* a first surface;"

7. Claim 30 is objected to because of the following informalities: In line 2, "detachable" should be "detachably."

8. Claims 30-33, 38-40, 43, 44, and 46 are objected to because of the following informalities: The claims are written to depend from claim 1, which has been cancelled. Examiner assumes that these claims were meant to depend from claim 7 for the remainder of this Office action.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 35 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 35, the metes and bounds of the term "accordion style" are unclear. Without no clearly identifiable connection or relevance between an accordion and a pocket, using the term "accordion style" to define structure in a pocket leaves room for interpretation on just how the pocket is structured.

In claim 39, the metes and bounds of the term "excessive noise" are unclear. What applicant deems "excessive noise" may not be "excessive noise" to another. "Excessive noise" could be interpreted as a faint noise in some situations, or a rather deafening noise in another situation.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 7-9, 11-15, 17, 18, 21, 23-26, 29, 30, 34-40, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoffman et al. (5,649,658). Hoffman et al. discloses a pack and a hunting blind (110); wherein: the hunting blind has a stowed position (figure 4) and a deployed position (figure 6); the pack has a first surface (69) having an open position (figure 6); the hunting blind is housed in the pack when in a stowed position and deployed from the pack when in a deployed position; the first

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surface depends from the pack when in an open position; the hunting blind extends from the pack and the first surface (figure 6); a first means (41), capable of detachably securing the pack to a tree stand to hang in a substantially vertical position; at least one carrying strap (26) is disposed on the pack; the pack is a backpack; the pack has a rear surface (69) that is also the said first surface (69); the pack has a second surface (13) on which the first means is disposed, the second surface being the top surface of the pack; the pack has a third surface (11) on which at least one carrying strap is disposed (figure 2); the at least one carrying strap being a pair of shoulder straps; the first means (41) includes at least one loop and is at least one strap (col. 3 line 37); the hunting blind is made of vinyl, which can be a thin and flexible material, easily wrapped and folded so as to be easily stowed inside the pack when the hunting blind is in a stowed position (col. 4 lines 30-35); at least one pocket (101) disposed on the pack and only visible when the first surface is in an open position and the hunting blind is in a deployed position (figure 6); the pack has an interior (10) that is accessible when the hunting blind is in a deployed position; the first surface (69) is detachably secured to the pack by a zipper (73); the pockets (101, 102, 47, 48) are of various shapes and sizes; the interior (10) of the pack is accessible from the top surface (13) by a zipper (23); the pack and hunting blind are both made from a waterproof material (col.3 line 2, col. 4 line 27), making them inherently water repellant as well; the pack has a height; the first surface has a height; the hunting blind extends substantially the height of the pack and the height of the first surface in that while it is deployed, it's height or length is substantially the height of both the pack and first surface added together (figure 6).

Regarding claims 30 and 38, Examiner has assumed that the claims were meant to depend from claim 7 rather than from claim 1 as they are written.

Regarding claim 35, Examiner considers the pockets of Hoffman et al. to be "accordion style" pockets since the metes and bounds of the term "accordion style" are unclear.

Regarding claim 39, Examiner considers nylon and vinyl, the respective materials from which Hoffman et al.'s pack and hunting blind are made, to be materials that do not produce "excessive noise" since the metes and bounds of the term "excessive noise" are unclear.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Bentzen (2001/0017307 A1). Hoffman et al. discloses the claimed invention except for a third means for detachably fastening the first means, where the third means is selected from the group consisting of buckles, D-rings, snaps, hook and loop fasteners, buttons, and ties. Bentzen, however, teaches a loop (44) on top of a backpack - considered to be applicant's first means - which is detachably fastened together by a buckle (figure 1) - considered to be applicant's third means. Therefore, it would have been obvious to one having ordinary skill in the art at the time



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the invention was made to modify the backpack of Hoffman et al. by making the loop on top of the pack detachably fastenable using a buckle, as taught by Bentzen, so that the user could directly suspend the pack from a particular location on a pole or similar support structure without having to slide the continuous, not detachably fastenable loop over the end of the pole or similar structure, along its length, to the desired location.

15. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Celik (5,467,907). Hoffman et al. discloses the claimed invention except for the pack and hunting blind having at least one of a pattern and coloration. It is, however, well known in the art that a backpack can be given any number of patterns and colors to suit a wide variety of needs and personal tastes. It follows that the hunting blind/changing pad would be made to match to pack. More specifically, Celik teaches an olive and green camouflage pack used for hunting. Therefor, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pack of Hoffman et al. by making it olive and green camouflage, as taught by Celik, and to make the hunting blind/changing pad to match the pack, in order to blend the hunter in with his/her surroundings, or to simply appeal to someone's personal tastes.

***Allowable Subject Matter***

16. Claims 10, 16, 19, 20, 22, 27, 28, 31-33, and 41-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


**Conclusion**

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weldon, Punch, and Latschaw teach related bags and/or hunting blinds or the combination thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER

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